

ISSUED TO ATTORNEY

FILED
00 NOV 13 PM 5:04

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

NORTHERN DISTRICT OF OHIO
TOLEDO

BARD MANUFACTURING CO.
1914 Randolph Drive
Bryan, OH 43506-2254

Plaintiff,

v.

EUBANK MANUFACTURING ENTERPRISES, INC.
Farm Market Road 2011
Longview, TX 75607

Defendant.

3 : 00 CV 77 11

JUDGE DAVID A. KATZ

COMPLAINT

NOW COMES Plaintiff BARD MANUFACTURING COMPANY, by and through its Attorneys, and complains of Defendant EUBANK MANUFACTURING ENTERPRISES, INC., as follows:

Jurisdiction And Venue

1. This action arises under the laws of the United States, including, without limitation, 35 U.S.C. §§ 271, 281, 283, 284 and 285. This Court has jurisdiction by virtue of 28 U.S.C. § 1338. The acts herein complained of have been committed in the Northern District of Ohio and in other places. Personal jurisdiction arises under Ohio Rule of Civil Procedure 4.3 and Ohio Revised Code § 2307.382. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and § 1400(b).

The Parties

2. Plaintiff BARD MANUFACTURING COMPANY is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 1914 Randolph Drive, Bryan, Ohio 43506-2254.

3. Upon information and belief, Defendant EUBANK MANUFACTURING ENTERPRISES, INC. is a corporation organized and existing under the laws of the State of Texas, having a place of business at Farm Market Road 2011, Longview, Texas 75607.

COUNT ONE
Patent Infringement

4. On April 12, 1994, United States Patent No. 5,301,744, entitled "MODULAR AIR CONDITIONING SYSTEM" (hereinafter "the '744 Patent"), was duly and legally issued on an Application filed by Irvin L. Derks on February 5, 1993, which Application for Letters Patent has been assigned to Plaintiff, BARD MANUFACTURING COMPANY. A copy of the '744 Patent is attached herewith as Exhibit A.

5. Plaintiff BARD MANUFACTURING COMPANY has, at all times relevant hereto, been the owner, and still is the owner, of the '744 Patent.

6. As assignee/owner, Plaintiff BARD MANUFACTURING COMPANY possesses the right to bring suit against any infringer of the '744 Patent.

7. On January 23, 1996, United States Patent No. 5,485,878, entitled "MODULAR AIR CONDITIONING SYSTEM" (hereinafter the '878 Patent), was duly and legally issued on an Application filed by Irvin L. Derks on March 23, 1994, which Application for Letters Patent

has been assigned to Plaintiff, BARD MANUFACTURING COMPANY. A copy of the '878 Patent is attached herewith as Exhibit B.

8. Plaintiff BARD MANUFACTURING COMPANY has at all times relevant hereto been the owner, and still is the owner, of the '878 Patent.

9. As assignee/owner, Plaintiff BARD MANUFACTURING COMPANY possesses the right to bring suit against any infringer of the '878 Patent.

10. Defendant EUBANK MANUFACTURING ENTERPRISES, INC. has heretofore and is still directly infringing both the '744 Patent and the '878 Patent by making, using and selling the invention falling within the Claims of both the '744 Patent and the '878 Patent, and by actively inducing and contributing to the infringement of both the '744 Patent and the '878 Patent by others, and will continue to do so unless enjoined by this Court. On information and belief, such infringing acts have been and are now being committed within the State of Ohio.

11. Such willful and deliberately infringing acts of Defendant EUBANK MANUFACTURING ENTERPRISES, INC. have caused and continue to cause Plaintiff BARD MANUFACTURING COMPANY to suffer damages in a sum not yet ascertained and have caused and threaten to continue to cause irreparable damage to Plaintiff.

12. Defendant EUBANK MANUFACTURING ENTERPRISES, INC. has notice of the '744 Patent and the '878 Patent and Defendant's infringement of both, and Defendant is hereby given further notice thereof. Products sold by Plaintiff BARD MANUFACTURING COMPANY have been and are now properly marked with the applicable Patent numbers.

13. Defendant EUBANK MANUFACTURING ENTERPRISES, INC. will continue to infringe both the '744 Patent and the '878 Patent unless Defendant is enjoined from doing so by this Court.

WHEREFORE, Plaintiff prays for:

A. Issuance of preliminary and permanent injunctions, pursuant to 35 U.S.C. § 283, and other law, enjoining and restraining Defendant EUBANK MANUFACTURING ENTERPRISES, INC., its agents and employees and all persons and organizations in privity or active concert with Defendant, from continued and further direct infringement or inducing and contributing to infringement of both the '744 Patent and the '878 Patent;

B. Compensatory damages, pursuant to 35 U.S.C. § 284, in a sum which shall be determined at trial;

C. Profits made by Defendant EUBANK MANUFACTURING ENTERPRISES, INC. due to its infringement of both the '744 Patent and the '878 Patents;

D. Damages increased to the maximum of three times the compensatory damages, pursuant to 35 U.S.C. § 284, due to the willful and deliberate nature of the infringement;

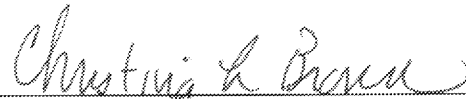
E. Costs of the suit and attorneys' fees, pursuant to 35 U.S.C. § 285;

F. Interest on the award, costs, fees and other charges to the maximum extent permissible, including prejudgment interest;

G. An order that all goods violating Plaintiff's common law or statutory rights, whether State or Federal-based, be delivered up for destruction; and

H. Such other and further relief as this Court may deem just and reasonable.

Respectfully submitted,



Michael H. Baniak

Christina L. Brown (Ohio Bar No. 0055521)

Timothy M. Morella (Ohio Bar No. 0068843)

BANIAK NICHOLAS PINE & GANNON

1603 Orrington Avenue, Suite 2000

Evanston, Illinois 60201

(847) 424-8420

(847) 424-8320 Facsimile

Attorneys for Plaintiff

Bard Manufacturing Company

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

BARD MANUFACTURING CO.
1914 Randolph Drive
Bryan, OH 43506-2254
Plaintiff,

v.

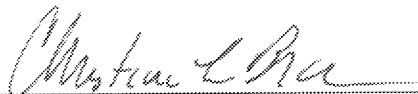
EUBANK MANUFACTURING ENTERPRISES, INC.
Farm Market Road 2011
Longview, TX 75607
Defendant.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff BARD MANUFACTURING COMPANY, by and through its Attorneys, demands a trial by jury in the above-actioned lawsuit of any issue triable of right by jury.

Respectfully submitted,

Dated: November 9, 2000


Michael H. Baniak
Christina L. Brown (Ohio Bar No. 0055521)
Timothy M. Morella (Ohio Bar No. 0068843)
BANIAK NICHOLAS PINE & GANNON
1603 Orrington Avenue, Suite 2000
Evanston, Illinois 60201
(847) 424-8420
(847) 424-8320 Facsimile
Attorneys for Plaintiff
Bard Manufacturing Company